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No. 05-1638

In the Supreme Court of the United States

JON CORZINE, in his official capacity as Governor of the State of New Jersey, *et al.*,

Petitioners,

v.

AMERICAN TRUCKING ASSOCIATIONS, INC. AND US XPRESS, INC.

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether state regulations that impose special burdens on trucks traveling interstate – confining trucks that conduct an exclusively interstate business to certain interstate highways, while allowing otherwise identical trucks that conduct intrastate business to use state and local roads – violate the Commerce Clause of the U.S. Constitution.

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STATEMENT

This case involves a challenge to New Jersey regulations that discriminate, both facially and in practical effect, against trucks traveling interstate. Those regulations confine certain large trucks traveling through New Jersey to a limited number of interstate highways, even when use of state or local roads by those trucks would be more direct or economical. At the same time, the regulations allow otherwise identical trucks to make extensive use of state or local roads so long as those trucks travel a route that originates or terminates in New Jersey. The courts below struck down these regulations under the Commerce Clause of the U.S. Constitution. Because the decision below correctly applies settled law, is wholly consistent with this Court's holdings, and does not depart from the rulings of other courts of appeals, further review is not warranted.

1. The New Jersey regulations at issue in this case involve certain large trucks – double trailer-truck combinations and 102-inch wide tractor trailers – that are collectively described as "restricted vehicles." With limited exceptions not relevant here, the regulations require restricted vehicles that are traveling *through* New Jersey with neither an origin nor a destination in the State to confine their operations to the national network of interstate highways (the "national network"). There are approximately 546 miles of national network interstate highways in New Jersey. In contrast, the regulations permit restricted vehicles that are engaged in purely intrastate commerce or in interstate commerce that includes an origin or destination in New Jersey to use both the national network *and* the so-called New Jersey network, a much larger 3600-mile system of state and local secondary roads. Pet. App. 3a-4a. Penalties for interstate truckers who violate the regulations by using the New Jersey network include an escalating series of mandatory fines. *Id.* at 4a.

Under this regulatory regime, "trucks doing business in New Jersey are allowed unlimited access to the New Jersey network." Pet. App. 13a. Thus, as the district court explained, "[a] vehicle otherwise matching the definition of a "Restricted Vehicle but that is engaged purely in intrastate commerce or interstate commerce involving an origin or destination in New Jersey may use the New Jersey Access Network for any portion of its trip, not merely the portion required to reach a particular point of origin or destination." *Id.* at 36a. "This means that such a vehicle with a delivery in the northern most portion of the State may use even those roads that run only through the [s]outhern most portion of the State." *Ibid.*

Unsurprisingly, this system imposed substantial costs on trucks that passed through, but did not stop to do business in, New Jersey. See Pet. App. 13a-14a. For example, the court of appeals noted that the State's own evidence "showed that the trip from Philadelphia to upstate New York was longer in distance and time, and costlier in tolls and fuel, when the driver was forced to use the National Network instead of the New Jersey network." *Id.* at 13a n.5. Relying solely on the testimony of New Jersey's expert and looking only at a subset of trucks traveling only a single route, the district court accordingly found that, "at minimum, the Regulations in question result in an aggregate negative [annual] economic impact on those carriers engaged in purely interstate commerce of between $1,333,000 and $4,434,000." *Id.* at 42a. The aggregate cost imposed on all interstate trucks by the New Jersey regulations is substantially greater.

2. Respondents, an interstate motor carrier and a national trucking trade association, brought this action in United States District Court for the District of New Jersey, contending that the New Jersey regulations discriminate against trucks traveling interstate and therefore violate the Commerce Clause. After denying both parties' motions for summary judgment (see Pet. App. 53a-72a) and holding a

trial, the district court found the regulations unconstitutional. *Id.* at 26a-52a.

The court explained:

> Because the Regulations exempt those carriers engaged in purely intrastate commerce or interstate commerce involving New Jersey, enabling those carriers to operate at lower costs by avoiding toll roads, minimizing distances and/or choosing faster routes than those Restricted Vehicles passing through New Jersey to engage in commerce elsewhere, this Court is satisfied that the regulations discriminate in favor of in-state commerce and against commerce in other states.

Pet. App. 47a-48a. The court added that the State's exemption of carriers that conduct business in New Jersey from the restrictive regulations "weakens the presumption in favor of the validity of highway safety regulations because it 'undermine[s] the assumption that the State's own political processes will act as a check on local regulations that unduly burden interstate commerce.'" *Id.* at 48a (quoting *Raymond Motor Transp., Inc.* v. *Rice*, 434 U.S. 429, 446-447 (1978)).

The court also found "as a matter of fact that the Regulations could require that Restricted Vehicles with business in the State use the New Jersey Access Network only as needed to reach particular origins or destinations and to return to the National Network consistent with the vehicle's next destination point." Pet. App. 44a. Because the court therefore saw "no reason why the State could not have passed a workable Regulation that more evenly restricted both carriers doing business outside of the State, as well as those doing business within the State," it "conclude[d] that there are available nondiscriminatory means by which the State can achieve its purported purpose of minimizing congestion and enhancing the safety of its citizens." *Id.* at 51a-52a (footnote omitted). In this regard, the court noted

evidence that workability was not the only reason New Jersey wholly exempted trucks that did business in the State from the regulations; the Commissioner of New Jersey's Department of Transportation had opposed broadening the regulations to reach all restricted vehicles, including those whose travel originated or terminated in the State, because doing so "'would adversely impact New Jersey based businesses and the economic competitiveness of New Jersey based businesses.'" *Id.* at 51a (citation omitted).

3. The court of appeals affirmed. Pet. App. 1a-19a. The court began by observing that "*non-discriminatory* highway safety statutes must be given a more deferential treatment, and may not be overturned absent a showing that the safety benefits are slight, problematic, or illusory." *Id.* at 11a (emphasis added). But the court held that principle inapplicable here because the New Jersey regulations "are facially discriminatory." *Id.* at 13a.

The court explained:

> The text of the regulations explicitly distinguishes out-of-state trucks that are passing through New Jersey and imposes additional burdens on these trucks. The Regulations deny trucks of out-of-state businesses that pass through New Jersey access to 3600 miles of New Jersey Network roads. * * * Meanwhile, trucks doing business in New Jersey are allowed unlimited access to the New Jersey Network. * * * [T]he Regulations explicitly impose costs on the citizens and businesses of other states while exempting New Jersey's own citizens and businesses from those same costs. For this reason, we find the Regulations facially discriminatory.

Pet. App. at 14a. Having reached that conclusion, the court held that New Jersey's regulations could not survive the heightened scrutiny applicable to state regulations that

expressly discriminate against interstate commerce. *Id.* at 14a-16a (citing *Granholm* v. *Heald*, 544 U.S. 460, 472 (2005), *Oregon Waste Sys., Inc.* v. *Department of Envtl. Quality*, 511 U.S. 93 (1994), and *Philadelphia* v. *New Jersey*, 437 U.S. 617 (1978)).

Alternatively, the court held that the regulations could not survive because they "are discriminatory in effect." Pet. App. 16a. Pointing to the district court's factual findings, the court of appeals observed that, under the regulations, "many truckers involved in interstate commerce with no origin or destination in New Jersey would be forced to take longer and costlier routes when forced to use the National Network rather than the New Jersey Network." In contrast, "[c]ommercial interests which rely on imports from and exports to New Jersey are not subject to these increased costs." *Ibid.* In practical effect, then, the regulations "'impose commercial barriers or discriminate against an article of commerce by reason of its origin or destination out of state.'" *Id.* at 17a (quoting *C&A Carbone, Inc.* v. *Town of Clarkstown*, 511 U.S. 383, 390 (1994)).

The court of appeals also agreed with the district court "that a non-discriminatory alternative was available in the form of a regulation that would prohibit all trucks, regardless of origin or destination, from using the New Jersey Network except as needed to reach the National Network from a New Jersey origin, to reach a New Jersey destination from the National Network, or to access food, rest, fuel, or repairs." Pet. App. 18a. The court rejected the State's argument that this alternative was not feasible because enforcement would require police to conduct random stops of restricted vehicles and to make difficult determinations regarding whether a particular truck had to be on a state road to reach its destination; as the court noted, such stops *also* were necessary to police compliance with the regulations as written. *Id.* at 18a-19a. The Third Circuit therefore held that the district court's "conclusion that a non-discriminatory

alternative was available was based on solid reasoning and grounded in the evidence." *Id.* at 19a.

REASONS FOR DENYING THE PETITION

Petitioners argue that further review is warranted because Commerce Clause doctrine is unclear. But there is no ambiguity about the settled constitutional principle that controls in this case. The challenged New Jersey regulation expressly provides valuable benefits to trucks that conduct intrastate business, while withholding those benefits from otherwise identical trucks that make their pick-ups and deliveries in other states. Petitioner does not, and could not, cite any decision of any court upholding such a discriminatory regulation. Accordingly, the decision below was correct and the petition should be denied.

1. In seeking review, petitioners maintain that Commerce Clause doctrine is confused. Pet. 8-9, 10-11. Of course, there doubtless are areas where the jurisprudence of the Commerce Clause is murky. See generally *American Trucking Ass'ns, Inc.* v. *Scheiner*, 483 U.S. 266, 280 (1987). But this case does not involve any such uncertainty. The rule that governs here has long been settled: "Discrimination against interstate commerce in favor of local business or investment is *per se* invalid, save in a narrow class of cases in which the [state] can demonstrate, under rigorous scrutiny, that it has no other means to advance a legitimate local interest." *Carbone*, 511 U.S. at 393. See, *e.g.*, *Granholm*, 544 U.S. at 472 ("Time and again this Court has held that, in all but the narrowest circumstances, state laws violate the Commerce Clause if they mandate 'differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.'") (quoting *Oregon Waste Sys.*, 511 U.S. at 99); *Chemical Waste Mgmt., Inc.* v. *Hunt*, 504 U.S. 334, 342 (1992) ("[o]nce a state [law] is found to discriminate against out-of-state commerce, it is typically struck down without further inquiry"); *Bacchus Imports, Ltd.* v. *Dias*, 468 U.S. 263, 269 (1984). As the Third Circuit

correctly held, that principle is dispositive in a case, like this one, where the state law at issue discriminates on its face against interstate businesses.

2. Petitioners nevertheless maintain that state regulations intended to enhance highway safety "are entitled to a deferential standard of review" (Pet. 9-10, 13), pointing to *Kassel* v. *Consolidated Freightways Corp.*, 450 U.S. 662 (1981), *Raymond Motor Transp., Inc.* v. *Rice*, 434 U.S. 429 (1978), and *Bibb* v. *Navaho Freight Lines, Inc.*, 359 U.S. 520 (1959). At least in the circumstances of this case, the State's assertion is incorrect.

For one thing, we note that the Court *struck down* the state highway regulations at issue in each of those cases. But more fundamentally, the analysis used in those decisions simply has no bearing here. The decisions cited by petitioners involved facially *neutral* regulations and therefore called for application of the balancing test articulated in *Pike* v. *Bruce Church, Inc.*, 397 U.S. 137 (1970), to govern nondiscriminatory state laws. See *Kassel*, 450 U.S. at 670-671 (plurality opinion); *Raymond Motor*, 434 U.S. at 443 ("*Bibb* * * * stat[ed] the test to be applied to state highway regulation in terms similar in principle to the subsequent formulation in *Pike* v. *Bruce Church, Inc.*"). In contrast, the Court made clear in each cited decision that a much stricter standard applies when – as in this case – the state regulations "discriminate on their face against interstate commerce." *Raymond Motor*, 434 U.S. at 444 n.18. See *Kassel*, 450 U.S. at 675-676 (plurality opinion) ("Less deference to the legislative judgment is due * * * where the local regulation bears disproportionately on out-of-state residents and businesses."); *id.* at 680 (Brennan, J., concurring in the judgment) ("Protectionist legislation is unconstitutional under the Commerce Clause, even if the burdens and benefits are related to safety rather than economics."); *Bibb*, 359 U.S. at 529.

Against this background, deference is not due New Jersey's discriminatory regulations and the Commerce Clause anti-discrimination principle resolves this case. Petitioners do not, and could not, deny that the New Jersey regulations expressly accord differing treatment to truckers depending upon whether they do business in-state or out-of-state – and it is obvious, as both lower courts found as a matter of fact, that New Jersey's disparate treatment imposes real and significant burdens on the out-of-staters. Petitioners do suggest that the State did not set out to disadvantage interstate businesses when it implemented the regulations. Pet. 13. But assuming that proposition to be true – a point that is by no means clear from the record[1] – it is immaterial: even when "discrimination against foreign commerce * * * is intended to promote administrative convenience rather than economic protectionism, * * * [a]bsent a compelling justification, * * * a State may not advance its legitimate goals by means that facially discriminate against foreign commerce." *Kraft General Foods, Inc.* v. *Iowa Dept. of Rev. & Fin.*, 505 U.S. 71, 81 (1992).

Nor is this a case in which discrimination is essential to advance an important state interest. Both courts below found as a matter of fact that the State has available to it a practicable, nondiscriminatory approach that was equally effective in advancing safety goals. Petitioners do not contest that conclusion here. After all, the challenged regulations do far more than allow use of New Jersey roads when necessary to make in-state pick-ups or deliveries; under

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[1] As noted above, the Commissioner of New Jersey's Department of Transportation opposed broadening the state regulations to reach all restricted vehicles, including those whose travel originated or terminated in the State, on the ground that an expansion of the regulations "'would adversely impact New Jersey based businesses and the economic competitiveness of New Jersey based businesses.'" Pet. App. 51a (citation omitted).

the regulations, a truck making a pick-up in (for example) Cape May, in the far south of the State, is allowed unlimited use of New Jersey network roads near Patterson, in the far north. In this Court, petitioners offer no defense of this regime.

In short, petitioners do not identify any conflict in the lower courts on the question presented here. They do not cite any decision of this Court that is in tension with the holding below. And they point to no evidence that there is any confusion about the constitutional status of state laws – highway regulations or otherwise – that work a facial discrimination against interstate commerce. Review of the Third Circuit's decision therefore is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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